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**UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

MICHAEL GRAVES, KEITH GREN, and  
MICHAEL WHEALEN, on behalf of  
themselves, all others similarly situated, and  
the general public,

Plaintiffs,

v.

UNITED INDUSTRIES CORPORATION,  
a Delaware Corporation,

Defendant.

Case No.: 2:17-cv-06983-CAS-SK

CLASS ACTION

**FOURTH AMENDED CLASS  
ACTION COMPLAINT**

1 Plaintiffs MICHAEL GRAVES, KEITH GREN, and MICHAEL WHEALEN  
2 (“Plaintiffs”), on behalf of themselves, all others similarly situated, and the general  
3 public, by and through their undersigned counsel, hereby bring this action against  
4 UNITED INDUSTRIES CORPORATION (“UIC”), and alleges the following upon their  
5 own personal knowledge or, where they lack personal knowledge, upon information and  
6 belief, including the investigation of their counsel.

7 **JURISDICTION AND VENUE**

8 1. This Court has jurisdiction over this action pursuant to 28 U.S.C. §  
9 1332(d)(2)(A), the Class Action Fairness Act, because the matter in controversy exceeds  
10 the sum or value of \$5,000,000 exclusive of interest and costs, and at least one member  
11 of the class of plaintiffs is a citizen of a state different from UIC. In addition, more than  
12 two-thirds of the members of the class reside in states other than the state in which UIC  
13 is a citizen and in which this case is filed, and therefore any exceptions to jurisdiction  
14 under 28 U.S.C. § 1332(d) do not apply. The Court also has supplemental jurisdiction  
15 over plaintiff’s state law claims pursuant to 28 U.S.C. § 1367.

16 2. The Court has personal jurisdiction over UIC pursuant to Cal. Code Civ. P.  
17 § 410.10, as a result of UIC’s substantial, continuous and systematic contacts with the  
18 state and because UIC has purposely availed itself of the benefits and privileges of  
19 conducting business activities within the state.

20 3. Venue is proper in the Central District of California pursuant to 28 U.S.C. §  
21 1391(b) and (c), because UIC resides (i.e., is subject to personal jurisdiction) in this  
22 district, and a substantial part of the events or omissions giving rise to the claims occurred  
23 in this district. Moreover, Plaintiffs Graves and Gren reside in this District and purchased  
24 the Spectracide Products within this District.

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## SUMMARY OF CASE

4. UIC is the manufacturer of a herbicide known as Spectracide® Weed and Grass Killer. Among other UIC products, UIC manufactures, markets, and sells Spectracide® Weed and Grass Killer Concentrate (“Spectracide Concentrate”). Unlike “Ready-to-Use” Spectracide, the Spectracide Concentrates are intended to be diluted with water prior to use, so that the diluted product will have the same weed-killing power as Ready-to-Use Spectracide®.

5. During at least the preceding four years, UIC advertised the Spectracide® Concentrates as being capable of making a certain number of gallons. For example, prominently at the top of the container in bold red numbers on a yellow background, the 32-fluid ounce size advertises it “Makes Up to 10 Gallons.” as pictured below.



6. Copies of the labels for the Spectracide Concentrates that were in use during the Class Period are attached hereto as Exhibit 1.

7. These labels were false, however, because the Spectracide Concentrates were in fact only capable of making a fraction of the number of gallons represented when diluted to the same strength as “Ready-to use” Spectracide® according to UIC’s own instructions. For example, the 32-fluid ounce size makes only 6.4 gallons of Spectracide® when used for “general weed control.”

8. Plaintiffs bring this action to recover damages and restitution for themselves and other purchasers.

### PARTIES

9. Plaintiff Michael Graves is a resident of Wilmington, California.

10. Plaintiff Keith Gren is a resident of North Hills, California.

11. Plaintiff Michael Whealen is a resident of St. Louis, Missouri.

12. Defendant United Industries Corporation is a Delaware Corporation that maintains its principal place of business at 1 Rider Trail Plaza Drive Suite 300 Earth City Missouri 63045.

### FACTS

13. UIC manufactures, markets and sells Spectracide Concentrate in 16-, 32-, 40-, and 64-fluid ounce bottles, as pictured below.



14. The principal display panel of each of the Spectracide Concentrates prominently claims that that product “Makes Up to” a stated number of gallons, as follows:

|   |                          |
|---|--------------------------|
| Spectracide Weed and Grass Killer Concentrate 16 Fluid Ounce. | “Makes Up to 5 Gallons”  |
| Spectracide Weed and Grass Killer Concentrate 32 Fluid Ounce. | “Makes Up to 10 Gallons” |
| Spectracide Weed and Grass Killer Concentrate 40 Fluid Ounce. | “Makes Up to 13 Gallons” |
| Spectracide Weed and Grass Killer Concentrate 64 Fluid Ounce. | “Makes Up to 20 Gallons” |

15. Directly under the Spectracide name, each Spectracide® Concentrate label states “WEED & GRASS KILLER.” Further, directly under the Spectracide® name and inside of a red rectangle, each Spectracide® Concentrate label also claims the product “Kills the Root!”

16. Given the price of the Spectracide® Concentrates in comparison to Ready-to-Use Spectracide®, together with the purported number of gallons each Spectracide® Concentrate makes, UCI markets the Spectracide® Concentrates as better values than its Ready-to-Use products.

17. Some versions of the Spectracide Concentrate Products that were sold during the class period have a glossy several-page pamphlet that is taped over the back label of the bottle, with its front page showing a graphic providing information under

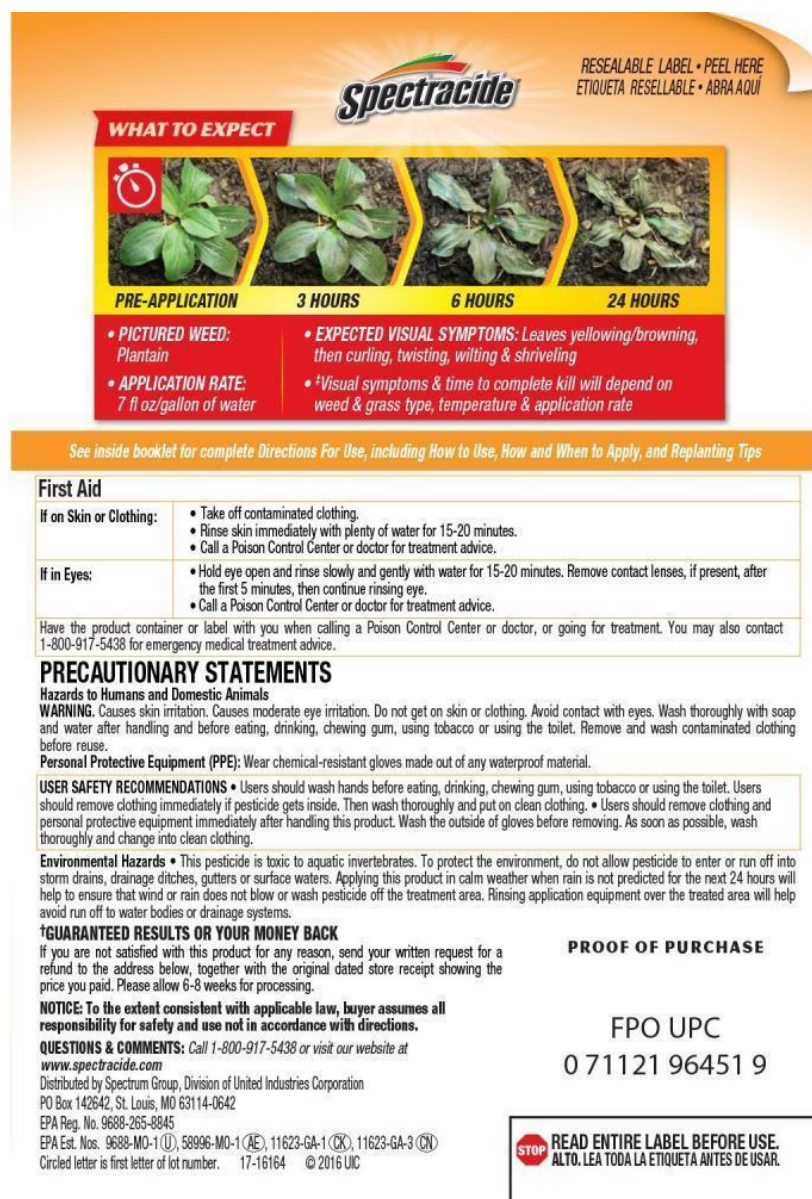
three headings, “Where to Use,” “What it Does,” and “When to use.” The back of the bottle of the Spectracide® Concentrate 64- Fluid Ounce taped pamphlet is depicted on the following page:



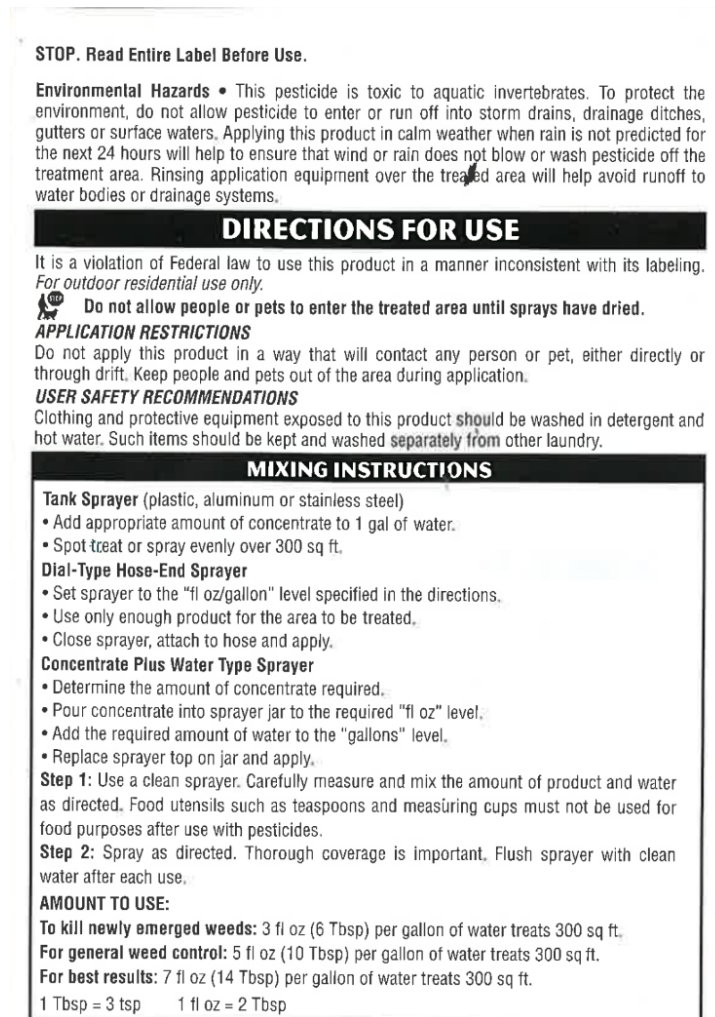
18. As depicted above, the back label also has a heading that states “Amount to Use.” Under the “Amount to Use” heading, the Spectracide 64 Fluid Ounce bottle states that “For Best Results: 7 fl oz (14 Tbsp) per gallon of water;” for “general weed control (annuals): 5 fl oz (10 Tbsp) per gallon of water;” and for “Newly emerged weeds: 3 fl oz (6 Tbsp) per gallon of water.” The back label also states “Makes Up to 20 Gallons.” These instructions fail to explicitly state *which* option produces the “makes up to” advertisement on the front label of the Concentrate bottle.



19. Other versions of the Spectracide Concentrate Products that were sold during the class period do not clearly show the mixing instructions on the back label of the product. Instead, for these versions of the Spectracide Concentrate Products, a consumer would only be able to view the mixing instructions by peeling off the tape from the back pamphlet and searching through the multi-page booklet. The back of the bottle for the version of the Spectracide Concentrate 64-Fluid Ounce Product that does not clearly show the mixing instructions is pictured below:



20. The inside of the several-page pamphlet for both versions of the Spectracide Concentrate Products also has a section titled “mixing instructions.” The “mixing instructions” for the Spectracide® Concentrate 64- Fluid Ounce bottle is depicted on the following page:



21. As depicted above, the “mixing instructions” for the Spectracide® Concentrate 64-fluid ounce bottle has a sub-heading titled “Amount to Use” that provides the following instructions:

**To kill newly emerged weeds:** 3 fl oz (6 Tbsp) per gallon of water treats 300 sq ft.  
**For general weed control:** 5 fl oz (10 Tbsp) per gallon of water treats 300 sq ft.  
**For best results:** 7 fl oz (14 Tbsp) per gallon of water treats 300 sq ft.

1 Tbsp= 3 tsp

1 fl oz = 2 Tbsp



22. Given the dilutions set forth on the back panel of each Spectracide® Concentrate, the specified number of gallons that UIC represents the Spectracide® Concentrates are capable of making is *only a fraction* what they are actually capable of making when mixed with water according to UIC's own instructions "for general weed control." Thus, the Spectracide® Concentrates actually make less than the amount UIC claims "for general weed control," as demonstrated in the table below.

| Product                                 | "Makes up to" gallon claim | Back label instruction "for general weed control" (Amount to mix with 1 gallon of water) | Amount made following instructions |
|---|----------------------------|--|------------------------------------|
| Spectracide® Concentrate 16-fluid ounce | "Makes up to 5 Gallons"    | "5 fl oz (10 Tbps) per gallon of water treats 300 sq ft."                                | 3.2 Gallons                        |
| Spectracide® Concentrate 32-fluid ounce | "Makes up to 10 Gallons"   | "5 fl oz (10 Tbps) per gallon of water treats 300 sq ft."                                | 6.4 Gallons                        |
| Spectracide® Concentrate 40-fluid ounce | "Makes up to 13 Gallons"   | "5 fl oz (10 Tbps) per gallon of water treats 300 sq ft."                                | 8.0 Gallons                        |
| Spectracide® Concentrate 64-fluid ounce | "Makes up to 20 Gallons"   | "5 fl oz (10 Tbps) per gallon of water treats 300 sq ft."                                | 12.8 Gallons                       |

23. UIC fails to disclose that the advertised “makes up to” amount can only be achieved by following the mixing instruction for “newly emerged weeds.” However, reasonable consumers like plaintiffs would expect that the advertised “makes up to” amount would be for the product’s intended purpose, which is “general weed control.” Moreover, the “amount to use” mixing instructions are concealed inside the pamphlets that are taped to the back of the Products with respect to some iterations of the product packaging that was in use during the class period. *See* Exhibit 1.

24. A reasonable purchaser – for example, an ordinary homeowner interested in removing weeds along a fence, on a driveway, or around trees or flower beds – does not have the professional understanding of what constitutes an “newly emerged weed,” and does not have the technical expertise to discern when it would be appropriate to use less concentrate per this instruction. To the contrary, a reasonable consumer would instead rely on UIC’s representation that “for general weed control” “5 fl oz (10 Tbps) per gallon of water treats 300 sq ft.”

25. Reasonable consumers read and understand “up to” representations – like the “Makes Up to” a specific number of “Gallons” representations on the UIC Concentrates – as providing, under normal and reasonable conditions for use, the maximum results promised. Indeed, the U.S. Federal Trade Commission has explicitly determined this to be the case, stating that its “view” is “that advertisers using these claims should be able to substantiate that consumers are likely to achieve the maximum results promised under normal circumstances.” *See* Exhibits 2 & 3.

26. As demonstrated by the pamphlet itself, including its cover, use of the product only on “newly emerged weeds” is not normal use. Rather, normal use is as represented on the pamphlet’s cover, and of course on the front of the bottle: as a “WEED AND GRASS KILLER,” that “Kills The Root!” and is to be used “on patios, walkways, and flowerbeds.”

27. An enlarged image of the Spectracide® Concentrate 64-fluid ounce bottle is depicted on the following page:



28. Reasonable consumers should not be expected to look beyond misleading representations on the front of the label to discover the truth from the mixing instructions in small print on the back pamphlet of the product. This is especially true where, as here, the products at issue are concentrated forms of a Ready-to-Use product. In other words, reasonable consumers understand that they will obtain the same degree of efficacy, indeed the same formulation and therefore the same concentration of active ingredient, as UIC's Ready-to-Use Concentrate product, the only difference being that for a higher

1 price paid, the consumer receives a better value: more product at the same concentration  
2 for less money.

3 29. Indeed, this is what UIC intends a consumer to understand about the  
4 Spectracide Concentrates, this is a fundamental aspect of UIC's marketing of these  
5 concentrate products, this is what consumers reasonably rely on in purchasing these  
6 concentrate products, and this is what consumers reasonably expect upon purchasing and  
7 using these concentrate products.

8 **PLAINTIFFS' RELIANCE AND INJURY**

9 30. Plaintiff Michael Graves purchased the 32-Fluid Ounce Spectracide®  
10 Concentrate products on multiple occasions from Home Depot stores located in Carson,  
11 California and in Torrance, California during the Class Period. In purchasing the  
12 Spectracide® Concentrate products, Plaintiff Graves read and relied on the prominent  
13 labeling claim near the top of the front of the bottle stating that the product "makes up  
14 to" a specified amount of gallons of the product which he took to mean would, in fact,  
15 make up to the advertised amount of gallons when used as directed for general weed  
16 control.

17 31. Plaintiff Keith Gren purchased the 64-Fluid Ounce Spectracide Concentrate  
18 products on multiple occasions from a Home Depot store located in Van Nuys, California  
19 during the Class Period. In purchasing the Spectracide® Concentrate products, Plaintiff  
20 Gren read and relied on the prominent labeling claim near the top of the front of the bottle  
21 stating that the product "makes up to" a specified amount of gallons of the product which  
22 he took to mean would, in fact, make up to the advertised amount of gallons when used  
23 as directed for general weed control.

24 32. Plaintiff Michael Whealen purchased the Spectracide® Concentrate  
25 products, including the 32-Fluid Ounce Spectracide® Concentrate, on multiple occasions  
26 from Wal-Mart, Home Depot, Lowes, and Handyman True Value stores located near his  
27 home in St. Louis, Missouri during the Class Period. In purchasing the Spectracide®  
28 Concentrate products, Plaintiff Whealen read and relied on the prominent labeling claim

1 near the top of the front of the bottle stating that the product “makes up to” a specified  
2 amount of gallons of the product which he took to mean would, in fact, make up to the  
3 advertised amount of gallons when used as directed for general weed control.

4 33. When purchasing Spectracide® Concentrate, Plaintiffs were seeking a  
5 product that was effective at killing all unwanted weeds and grass, and which was more  
6 affordable than the Spectracide Ready-to-Use products, and understood that they were  
7 purchasing a concentrate with a substantially better dollar-per-gallon value than the  
8 Ready-to-Use alternative (i.e., the value that would be had if the product supplied the  
9 maximum number of gallons). Moreover, Plaintiffs were seeking a product that would  
10 yield the number of gallons represented, and, at the dilution that resulted in that amount  
11 of gallons, would kill all unwanted weeds and grass, including a product that “Kills the  
12 Root!”

13 34. These representations, upon all of which Plaintiffs relied in purchasing these  
14 products, however, were false and misleading, and had the capacity, tendency, and  
15 likelihood to confuse or confound Plaintiffs and other consumers acting reasonably. This  
16 is because, as described in detail herein, the Spectracide® Concentrates do not yield the  
17 volume, in gallons, as promised on the label, if following the instructions stated on the  
18 product’s back panel or inside of the taped booklet that is attached to the Products.

19 35. These representations were also false and misleading because the  
20 Spectracide® Concentrates yield the volume, in gallons, of a product that is not as  
21 effective at killing all types of weed and grass, such as the Ready-to-Use Spectracide®  
22 products, and, diluted to the maximum volume represented, may not be effective at all,  
23 especially for certain applications.

24 36. The Spectracide® Concentrates cost more than similar products without  
25 misleading labeling, and would have cost less absent the false and misleading statements  
26 complained of herein.



1           37. Plaintiffs paid more for Spectracide® Concentrate, and would only have  
2 been willing to pay less, or unwilling to purchase it at all, absent the false and misleading  
3 labeling complained of herein.

4           38. For these reasons, Spectracide® Concentrate Products were worth less than  
5 what Plaintiffs paid for them, and may have been worth nothing if diluted to yield, by  
6 volume, the number of gallons promised on the label.

7           39. By use of its misleading labeling, UIC created increased marketplace  
8 demand for the Spectracide Concentrates, and increased its market share, relative to what  
9 its demand and share would have been had UIC labeled the Spectracide® Concentrate  
10 products truthfully.

11           40. Plaintiffs lost money as a result of UIC's deceptive claims and practices in  
12 that they did not receive what they paid for when purchasing Spectracide® Concentrate.

13           41. Plaintiffs detrimentally altered their position and suffered damages in an  
14 amount equal to the amount they paid for Spectracide® Concentrate, or at least some  
15 portion thereof.

16           42. If Plaintiffs could be assured that claims regarding the amount yielded when  
17 mixing according to instructions was accurate, and that the product was effective at  
18 killing all weeds and grass as a result, and was not otherwise false or misleading, they  
19 would consider purchasing the product in the future.

20                           **CLASS ACTION ALLEGATIONS**

21           43. Pursuant to Federal Rule of Civil Procedure 23, Plaintiffs seek to represent  
22 a class of all persons residing in the United States who, on or after September 21, 2013  
23 until the date notice is disseminated to the Class (the "Class Period"), purchased in any  
24 state, for personal or household use and not for resale or distribution, UIC's herbicide  
25 products that are (a) sold under the "Spectracide®" tradename and (b) are sold in a  
26 "concentrate" product form (in other words, designed to be manually mixed by  
27 consumers with water prior to use on targeted vegetation).

1        44. The members in the proposed Class are so numerous that individual joinder  
2 of all members is impracticable, and the disposition of the claims of all Class members  
3 in a single action will provide substantial benefits to the parties and Court.

4        45. Questions of law and fact common to Plaintiffs and the Class include:

- 5        a. whether by mixing according to the instructions on the back label of the  
6        Spectracide Concentrates, the products would result in the “Makes Up To”  
7        amount of gallons stated on the principal display panel and in the first bullet point  
8        under the heading “MIXING INSTRUCTIONS” in the taped, sealed pamphlet;  
9        b. whether the claimed “Makes up to” amount of gallons was material to  
10       purchasers;  
11       c. Whether a reasonable consumer believes that “Makes Up To” actually means the  
12       product will make that amount when used under normal, reasonable conditions;  
13       d. Whether a reasonable consumer would remove the sealed pamphlet before  
14       purchasing any Spectracide® Concentrate products;  
15       e. Whether a reasonable consumer would understand what “newly developed  
16       weeds” means;  
17       f. Whether by diluting the Spectracide Concentrates to actually obtain the “Makes  
18       Up To” amount of gallons claimed, the products are less effective than  
19       Spectracide®’s Ready-to-Use products;  
20       g. Whether by diluting the Spectracide® Concentrates to actually obtain the “Makes  
21       Up To” amount of gallons claimed, the products are ineffective;  
22       h. Whether UIC’s conduct violates public policy;  
23       i. The proper amount of damages, including punitive damages;  
24       j. The proper amount of restitution;  
25       k. The proper amount of attorneys’ fees.

26       46. These common questions of law and fact predominate over questions that  
27 affect only individual Class members.  
28

47. Plaintiffs' claims are typical of Class members' claims because they are based on the same underlying facts, events, and circumstances relating to UIC's conduct. Specifically, all Class members, including Plaintiffs, were subjected to the same misleading and deceptive conduct when they purchased the Spectracide® Concentrates, and suffered economic injury because Spectracide® Concentrates are misrepresented. Absent UIC's business practice of deceptively and unlawfully labeling the Spectracide® Concentrates, Plaintiffs and other Class members would not have purchased the Spectracide® Concentrates, or would have paid less for the products.

48. Plaintiffs will fairly and adequately represent and protect the interests of the Class, have no interests incompatible with the interests of the Class, and have retained counsel competent and experienced in class action litigation, and specifically in litigation involving false and misleading advertising.

49. Class treatment is superior to other options for resolution of the controversy because the relief sought for each Class member is small, such that, absent representative litigation, it would be infeasible for Class members to redress the wrongs done to them.

50. As a result of the foregoing, class treatment is appropriate under Fed. R. Civ. P. 23(a), 23(b)(2), and 23(b)(3).

51. In addition, it may be appropriate, pursuant to Fed. R. Civ. P. 23(c)(4), to maintain this action as a class action with respect to particular issues.

## **CAUSES OF ACTION**

### **FIRST CAUSE OF ACTION**

#### **VIOLATIONS OF THE MISSOURI MERCHANDISING PRACTICES ACT**

#### **MO. REV. STAT. §§ 407.010, *ET SEQ.***

52. Plaintiffs reallege and incorporate the allegations elsewhere in the Complaint as if set forth in full herein.

53. Plaintiffs, other members of the Class, and defendant, are all persons within the meaning of the Missouri Merchandising Practices Act ("MMPA"), Mo. Rev. Stat. § 407.010(5).

1        54. Defendant conducted trade and commerce within the meaning of the  
2 MMPA, *id.* § 407.010(7).

3        55. The MMPA, *id.* § 407.020.1, provides that:

4        The act, use or employment by any person of any deception, fraud, false  
5 pretense, false promise, misrepresentation, unfair practice or the concealment,  
6 suppression, or omission of any material fact in connection with the sale or  
7 advertisement of any merchandise in trade or commerce . . . in or from the  
8 state of Missouri, is declared to be an unlawful practice. . . . Any act, use or  
9 employment declared unlawful by this subsection violates this subsection  
10 whether committed before, during or after the sale, advertisement or  
11 solicitation.

12        56. For the reasons described herein, during the Class Period, UIC engaged in  
13 deception, fraud, false pretense, false promise, misrepresentation, unfair practice,  
14 concealment, suppression, and omission, in connection with its sale and advertisement of  
15 the Spectracide® Concentrate Products.

16        57. Specifically, UIC overstated the number of gallons of spray solution the  
17 Spectracide® Concentrate Products would make for general weed control purposes,  
18 based on an unrealistic mixing instruction hidden on the back label or inside the pamphlet  
19 that reasonable consumers would not see before purchasing the Products.

20        58. By virtue of UIC's violation, plaintiffs and other Class members suffered an  
21 ascertainable loss within the meaning of the MMPA, *id.* § 407.025.1, because the actual  
22 value of the Spectracide® Concentrate Products they purchased was less than the value  
23 of the Products as represented and thus are entitled to bring this action against defendant,  
24 including on a classwide basis, *id.* §§ 407.025.2-3.

25 ////

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27 ////

28 ////

**SECOND CAUSE OF ACTION**  
**VIOLATIONS OF THE CONSUMERS LEGAL REMEDIES ACT**  
**CAL. CIV. CODE §§ 1750 *ET SEQ.***

59. Plaintiffs reallege and incorporate the allegations elsewhere in the Complaint as if set forth in full herein.

60. The CLRA prohibits deceptive practices in connection with the conduct of a business that provides goods, property, or services primarily for personal, family, or household purposes.

61. UIC's false and misleading labeling and other policies, acts, and practices described herein were designed to, and did, induce the purchase and use of UIC's Spectracide® Concentrates for personal, family, or household purposes by Plaintiffs and other Class members, and violated and continue to violate at least the following sections of the CLRA:

- a. § 1770(a)(5): Representing that goods or services have characteristics, ingredients, uses, benefits, or quantities which they do not have;
- b. § 1770(a)(7): Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;
- c. § 1770(a)(9): Advertising goods with intent not to sell them as advertised; and
- d. § 1770(a)(16): Representing the subject of a transaction has been supplied in accordance with a previous representation when it has not.

62. UIC profited from its sales of the falsely, deceptively, and unlawfully advertised Spectracide® Concentrates to unwary consumers.

63. UIC's wrongful business practices regarding the Spectracide Concentrate constituted, and constitute, a continuing course of conduct in violation of the CLRA.

64. Plaintiffs, on behalf of themselves and the Class, seek actual damages, injunctive relief, and attorneys' fees under Civil Code § 1782(d).



**THIRD CAUSE OF ACTION**  
**VIOLATIONS OF THE FALSE ADVERTISING LAW**  
**CAL. BUS. & PROF. CODE §§ 17500 *ET SEQ.***

65. Plaintiffs reallege and incorporate the allegations elsewhere in the Complaint as if set forth in full herein.

66. Under the FAL, “[i]t is unlawful for any person, firm, corporation or association, or any employee thereof with intent directly or indirectly to dispose of real or personal property or to perform services” to disseminate any statement “which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading.” Cal. Bus. & Prof. Code § 17500.

67. As alleged herein, the advertisements, labeling, policies, acts, and practices of UIC relating to its Spectracide® Concentrates misled consumers acting reasonably as to the amount purchased and efficacy of Spectracide® Concentrates.

68. Plaintiffs suffered injury in fact as a result of UIC’s actions as set forth herein because plaintiffs purchased Spectracide® Concentrate in reliance on UIC’s false and misleading marketing claims that the products “Make Up to” a certain volume when the instructions on the back panel are followed and/or when a purchaser seeks to obtain “best results” as instructed and advertised by UIC.

69. Plaintiffs suffered injury in fact as a result of UIC’s actions as set forth herein because Plaintiffs purchased Spectracide Concentrate in reliance on UIC’s false and misleading marketing claims that the products “Make Up To” a certain volume, by gallons, of product that is efficacious at killing all weeds and grass.

70. UIC’s business practices as alleged herein constitute unfair, deceptive, untrue, and misleading advertising pursuant to the FAL because UIC has advertised the Spectracide® Concentrates in a manner that is untrue and misleading, which UIC knew or reasonably should have known.

71. UIC profited from its sales of the falsely and deceptively advertised Spectracide Concentrates to unwary consumers.

72. As a result, pursuant to Cal. Bus. & Prof. Code § 17535, Plaintiffs and the Class are entitled equitable relief and restitution.

**FOURTH CAUSE OF ACTION**  
**VIOLATIONS OF THE UNFAIR COMPETITION LAW**  
**CAL. BUS. & PROF. CODE §§ 17200 ET SEQ.**

73. Plaintiffs reallege and incorporate the allegations elsewhere in the Complaint as if set forth in full herein.

74. The UCL prohibits any “unlawful, unfair or fraudulent business act or practice.” Cal. Bus. & Prof. Code § 17200.

75. The acts, omissions, misrepresentations, practices, and non-disclosures of UIC as alleged herein constitute business acts and practices.

**FRAUDULENT**

76. A statement or practice is fraudulent under the UCL if it is likely to deceive the public, applying a reasonable consumer test.

77. As set forth herein, UIC’s claims relating to the Spectracide® Concentrate products are likely to deceive reasonable consumers and the public.

**UNLAWFUL**

78. The acts alleged herein are “unlawful” under the UCL in that they violate at least the following laws:

- The False Advertising Law, Cal. Bus. & Prof. Code §§ 17500 *et seq.*; and
- The Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750 *et seq.*

**UNFAIR**

79. UIC’s conduct with respect to the labeling, advertising, and sale of the Spectracide® Concentrates was unfair because UIC’s conduct was immoral, unethical, unscrupulous, or substantially injurious to consumers and the utility of its conduct, if any, does not outweigh the gravity of the harm to its victims.

80. UIC’s conduct with respect to the labeling, advertising, and sale of Spectracide® Concentrates was also unfair because it violated public policy as declared

1 by specific constitutional, statutory or regulatory provisions, including but not limited to  
2 the False Advertising Law.

3 81. UIC's conduct with respect to the labeling, advertising, and sale of  
4 Spectracide® Concentrates was also unfair because the consumer injury was substantial,  
5 not outweighed by benefits to consumers or competition, and not one consumers  
6 themselves could reasonably have avoided.

7 82. UIC profited from its sale of the falsely, deceptively, and unlawfully  
8 advertised Spectracide Concentrate to unwary consumers.

9 83. Plaintiffs and the Class members are likely to be damaged by UIC's  
10 deceptive trade practices, as UIC continues to disseminate, and is otherwise free to  
11 continue to disseminate misleading information.

12 84. UIC's conduct caused and continues to cause substantial injury to Plaintiffs  
13 and the other Class Members, who have suffered injury in fact as a result of UIC's  
14 fraudulent, unlawful, and unfair conduct.

15 85. Plaintiffs, on behalf of themselves and the Class also seeks an order for the  
16 restitution of all monies from the sale of the Spectracide® Concentrates that UIC unjustly  
17 acquired through acts of unlawful competition.

#### 18 **PRAYER FOR RELIEF**

19 86. Wherefore, Plaintiffs, on behalf of themselves, all others similarly situated,  
20 and the general public, pray for judgment against UIC as to each and every cause of  
21 action, and the following remedies:

- 22 A. An Order declaring this action to be a proper class action, appointing
- 23 Plaintiff as class representative, and appointing their undersigned counsel
- 24 as class counsel;
- 25 B. An Order requiring UIC to bear the cost of class notice;
- 26 C. An Order requiring UIC to disgorge all monies, revenues, and profits
- 27 obtained by means of any wrongful act or practice;
- 28

- 1 D. An Order requiring UIC to pay restitution to restore all funds acquired by  
2 means of any act or practice declared by this Court to be an unlawful,  
3 unfair, or fraudulent business act or practice, untrue or misleading  
4 advertising, plus pre-and post-judgment interest thereon;  
5 E. An Order requiring UIC to pay all actual and statutory damages permitted  
6 under the causes of action alleged herein;  
7 F. Injunctive Relief;  
8 G. An award of attorneys' fees and costs; and  
9 H. Any other and further relief that Court deems necessary, just, or proper.

10 **JURY DEMAND**

11 Plaintiffs hereby demand a trial by jury on all issues so triable.  
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13

14 Date: May 15, 2019

**LAW OFFICES OF RONALD A. MARRON**

15  
16 By: /s/ Ronald A. Marron

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